ENGLAND.

APPEAL FROM THE COURT OF CHANCERY.

J. C. TRENT—*Appellant.*
C. E. TRENT and others—*Respondents.*

TESTATOR, by his will, gives an annuity to his wife and legacies to children, knowing that his personal estate was insufficient to answer these purposes; says nothing about his real estates, but appoints certain persons *trustees of inheritance* for the execution of his will. Question, whether the trustees took any interest in the real estates for the purposes of this will?

Mar. 19, 1813.

WILL. EFFECT OF THE WORDS "TRUSTEES OF INHERITANCE."

JOHN TRENT had an estate for life in certain lands in Barbadoes, remainder to trustees for a term of two hundred years, to secure a jointure of 500*l.* per annum to his wife, in case she survived him. In 1795, he became equitably entitled to certain lands in Somersetshire; in August 1796, he made the following will, duly executed, and attested by four witness:—

"*I, John Trent, do hereby give unto my wife 200l. per annum during her natural life, in addition to her jointure, my just debts being previously paid; and I do give unto my two younger children 6000l. each, to be paid when they severally come to the age of twenty-one: and I do appoint John Hanning, William Hanning, and Constantine Phipps, as trustees of inheritance for the execution hereof.*"

Soon after making this will, he dictated a codi-

cil to the said John Hanning, (who immediately reduced it to writing) in the following terms :— Mar. 19, 1813.

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"*I do give Robert Strike fifty pounds beyond his wages. It is Mr. Trent's wish that if either of his estates must be sold, that the Dillington estate (being the estate to which the said testator was equitably entitled as aforesaid) be first sold—Codicil* 6000*l. to the child of which Mrs. Trent is now pregnant, when he or she shall arrive at the age of twenty-one, and full interest for the same during the several children's minority.*"

The testator being very ill at the time of making the will, could only set his mark to it; but he recovered a little and signed the codicil, which was not, however, attested. The testator died the following day, leaving three children born in his lifetime, and one born in due time after his decease. The will was duly proved, and a bill was filed in Chancery by the younger children, the widow and trustees against the heir at law, to have the will established and carried into execution; and praying that an account might be taken of the testator's property, and that, if necessary, the annuity of 200*l.* and legacies might be declared to be charged on the real estates. After answer put in, issue joined, and witnesses examined, it appeared that the testator's personal estate was not nearly sufficient to satisfy the annuity and legacies.

The cause came on before the Master of the Rolls, who ordered a case to be made for the opinion of the Judges of the Common Pleas, on the following questions, viz.:—"*Whether John Hanning, William Hanning, and Constantine Phipps, took any and* 19th July, 1802.

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what estate or interest in the real estates of the said John Trent, under and by virtue of his will; or whether they had, by virtue of such will, a power to make any conveyance or appointment of any and what estate or interest of or in such real estates; and if they had, whether such power survived to the said John Hanning and William Hanning."

The Judges (*Mansfield, Heath, Rooke,* and *Chambre,*) unanimously certified "that the Hannings and Phipps took no interest in the real estates under the will, and that they had no power, by virtue of such will, to make any conveyance or appointment of any estate or interest of or in such real estates."

11th March, 1805.

The cause came on for further directions before the Lord Chancellor (*Eldon*), who directed a similar case for the opinion of the Court of King's Bench. Three of the Judges (*Ellenborough, Grose,* and *Le Blanc,*) certified as follows:—"18th Dec. 1805. *We have heard this case argued, we have considered it, and it appears to us, attending to the whole of the will, that the testator, John Trent, in appointing John Hanning, William Hanning, and Constantine Phipps as trustees of inheritance for the execution of his will, plainly meant to make them trustees of his estates of inheritance, in the same manner as if he had used the words, "Trustes of my inheritance," or "trustees to inherit my said estates for the execution of this my will." We are therefore of opinion, that the said John Hanning, William Hanning, and Constantine Phipps took an estate in fee in remainder in the said real*

estates of the said John Trent, subject to the term of two hundred years created by the settlement." Mar. 19, 1813.

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Justice Lawrence, on the contrary, agreed with the Judges of the Common Pleas, stating, amongst other reasons, that the words *trustees of inheritance*, upon which the Plaintiffs chiefly relied, in contending that the testator meant to charge his real estates, were too uncertain to support that conclusion in opposition to the rule of law, that the intent to disinherit the heir must appear *plainly* in his will, otherwise that the heir shall not be disinherited.

The cause came on again before the Chancellor for further directions, who confirmed the opinion of the three Judges of the King's Bench, in opposition to that of Justice Lawrence, and the Judges of the Common Pleas; whereupon the Heir at law appealed. 26th April, 1806.

Mr. Richards (for the Appellant), insisted on the rule of law, that the intention to disinherit the heir must distinctly appear in the will before it can have that effect. The word *inheritance* did not seem to have been used by the testator in a technical sense, but was applied to the personal estate.

Sir S. Romilly for the Respondents. No one had a greater respect than he had for Justice Lawrence, or more deeply regretted his resignation; but that eminent Judge had taken an erroneous view of this case. The great rule in the construction of wills, was to find out and to act upon, the intention of the testator, and to give effect, if possible, to every

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word in the will. In Scotland, indeed, they said "heir of personal estate;" but in England, the word *inheritance* was exclusively applicable to real estate. The appointment of trustees of inheritance was equally strong as a devise of the inheritance.

Lord Redesdale still retained the opinion which he had before formed, that the decision of the Chancellor, in conformity with the opinion of the three Judges of the King's Bench, was correct. He admitted this however to be a case of doubt, and it would be presuming in him not to do so, when the four Judges of the Common Pleas, and one of the Judges of the King's Bench had decided the other way. To apply the word inheritance to personal estate would be altogether an improper use of the term; and why should that be done, when in the present case it might perfectly well be understood in its proper sense?

Lord Eldon (Chancellor), concurred, but with doubt certainly, after the Judges had so much differed. It was a material fact, that the testator must have known at the time of making his will that his personal estate was insufficient to answer its purposes.

Judgment of the Court below affirmed.